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DIGEST OF WATER POLLUTION CONTROL LEGISLATION: NEW HAMPSHIRE

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Digest of WATER POLLUTION CONTROL LEGISLATION ... New Hampshire

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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

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Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF NEW HAMPSHIRE WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

Both the Water Pollution Commission and the State Board of Health have functions relating to the control of water pollution.

The Water Pollution Commission is authorized to study and investigate all problems connected with the pollution of the surface waters of the State (Ch. 149, sec. 4-II). 1/

The surface waters of the State are to be classified according to four standards, ranging in quality from the highest, Class A, to the progressively lower qualities, Class B, (divided into B-1 and B-2), Class C, and Class D.

Classes of Waters and Uses

Class	Uses
A	Water supply. Contains not more than 50 coliform bacteria per 100 m.l.
B-1	Bathing and other recreational purposes and, after adequate treatment, water supply. Contains 240 coliform bacteria per 100 m.l.
B-2	Recreational boating, fishing, and industrial purposes and, after adequate treatment, water supply. Contains not more than 1000 coliform bacteria per 100 m.l.
C	Recreational boating, fishing or industrial water supply. Must be free from chemicals and other materials and conditions inimical to fish life. Minimum dissolved oxygen content, 5. p.p.m.
D	Sewage and industrial waste transportation, but nuisances not permitted. Must contain dissolved oxygen at all times (Ch. 149, sec. 3).

1/ Citations in this digest refer to New Hampshire Revised Statutes Annotated, 1955, and the 1955 Supplement thereto, unless otherwise noted.

The 1957 Legislature (by House Joint Resolution No. 38), has directed the Water Pollution Commission to make a study of the pollution in the waters of the Great Bay and Little Bay, the Piscataqua River, and their tributaries in the seacoast region. The study is to include the preparation of plans for the control of the pollution of such waters. The Commission is directed to report its findings to the Legislature no later than the 1959 session. The sum of ten thousand dollars has been appropriated for this study (Laws of New Hampshire, 1957, Ch. 359).

The State is authorized to guarantee unconditionally bonds issued by municipalities and other political subdivisions for construction of sewage treatment works to the extent of a total of $10,000,000 for the entire State.

Waste treatment facilities constructed or placed in operation by anyone are exempt from local taxation for 25 years (Laws of New Hampshire, 1957, Ch. 213; 1955 Supp., Ch. 149, sec. 5-a).

The functions of the State Board of Health relate primarily to public water supplies and sewage treatment works (Ch. 148, secs. 22, 23).

II. ADMINISTRATIVE ORGANIZATION

A. Water Pollution Commission

1. Composition and Organization

The Commission consists of the Chairman, the State Health Officer, the Director of the Fish and Game Department, the Director of the Division of Recreation of the Forestry and Recreation Department, the Planning Director of the Planning and Development Commission, a Commissioner of the Public Service Commission, the Chairman of the Water Resources Board, and three members at large.

The Chairman is appointed by the Governor with the consent of the Council for a term of six years. The member who is a Commissioner of the Public Service Commission, is named to this Commission by the Governor with the consent of the Council, and the three members at large are appointed by the Governor with the consent of the Council for six year terms. Two of these represent industrial interests and the other must be an employee of a municipal or private water works of the State. The Director of the Division of Sanitary Engineering of the State Department of Health acts as Technical Secretary of the Commission, without voting power. He administers the provisions of the Act under the supervision of the Commission. The Commission meets at least quarterly each year. Special meetings may be held at any time agreed upon by the Commission, or upon the call of the Chairman or of any four members. Five members constitute a quorum (1955 Supp., Ch. 149, sec. 2-I; Ch. 149, sec. 2-II, III).

2. Powers and duties

a) Classification of waters

The Commission is authorized to hold public hearings, for the purpose of making recommendations to the Legislature for the classification of the waters of the State. After adoption of a classification by the Legislature, the Commission may on its own motion or on petition of not less than 100 inhabitants of the county or counties in which such water in question is situated, reinvestigate the conditions of pollution and make recommendations to the Legislature for the reclassification thereof (Ch. 149, secs. 6, 7).

b) Review of plans and specifications

The Commission requires the filing with it of plans and specifications for the installation of waste treatment systems, at least 30 days prior to the beginning of construction (Ch. 149, sec. 4-V).

c) Enforcement

After the adoption of a given classification for any of the waters of the State, it is unlawful for anyone to pollute the same in a manner that will lower the quality of the water below the minimum requirements of the adopted classification. The person responsible for such pollution may be required to abate the same within a specified time. If such pollution is of municipal or industrial origin, the time limit set by the Commission for such abatement must be not less than two years nor more than five years. The Commission may extend this time. Orders of the Commission establishing or extending time limits or refusing to do so are subject to appeal. Such appeals may be for a rehearing before the Commission or to the Supreme Court. (Ch. 149, secs. 8, 14; Ch. 541, secs. 1-22).

Before particular waters are classified by the Legislature, it is unlawful for anyone to dispose of any sewage or waste into such waters in excess of the maximum quantity, or of a different character, than that which was being discharged during the period of one year prior to July 1, 1947, without first obtaining written permission from the Commission. In such instances where the Commission has not recommended a classification, it may grant temporary permission for such discharge, pending a recommended classification, under such conditions as it may prescribe. Where the Commission has already determined a classification, it may give permission if such sewage or waste will not lower the quality of water below the determined classification (Ch. 149, sec. 8).

Persons aggrieved by the classification adopted by the Legislature may, within 6 months after such adoption, petition the Superior Court of the county in which the pollution is occurring for a variance in the classification as applied to his specific case. After the hearing, the Court may enter a decree authorizing a variance from the adopted classifi-

cation (Ch. 149, sec. 9).

When the Commission finds that an emergency has arisen due to the failure of or casualty to facilities for the control of pollution, it may authorize any person for a reasonable time to discharge sewage or other wastes into the surface waters, even if such discharge will have the effect of lowering the quality of such waters below the adopted classification (Ch. 149, sec. 10).

Anyone violating any of the provisions of the Act or who fails or refuses to obey any order of the Commission is subject to a fine of not more than $1,000.00 for each day such violation, neglect, or refusal continues, after the expiration of any time limit set by the Commission (Ch. 149, sec. 19).

d) Conduct of studies, investigations and research

The Commission is authorized to study and investigate all problems connected with the pollution of the surface waters of the State. It may conduct scientific experiments, investigations and research to discover economical and practical methods for the elimination, disposal or treatment of industrial wastes (Ch. 149, sec. 4).

e) Cooperation with other public and private agencies

The Commission may cooperate with any other public or private agency in the conduct of its experiments, investigations and research. It is the duty of other State agencies to cooperate and render such assistance as may be necessary to carry out the provisions of the Act. The Commission is the State agency designated to receive, or to make agreements on behalf of the State for, any Federal or other moneys for pollution control. It investigates and approves the applications of those municipalities, industries or other persons who request State or Federal aid for pollution control. The Commission may confer with authorities of other States

relative to methods of controlling pollution of interstate waters, and to submit to the Legislature recommendations relative to the adoption of interstate compacts. The Commission is the agency empowered to carry out such compacts after they have been approved (Ch. 149, sec. 4).

f) Administrative powers

The Commission is empowered to hold hearings, issue orders and permits. It issues subpoenas and administers oaths in any proceeding before it, and can compel the production of books and records. Any authorized member or agent of the Commission may enter any land or establishment for the purpose of collecting information necessary to carry out the purposes of the Act, and no one is permitted to refuse such entry (Ch. 149, secs. 6, 8, 13, 15).

3. Preservation of existing rights and remedies

Nothing in the Act is to be construed as modifying or limiting in any way the powers and duties of the State Board of Health under Chapter 148, or to interfere with its power to select and employ the sanitary engineers or other employees of its department (Ch. 149, sec. 12).

4. Severability clause

The Act contains a severability clause (Laws of New Hampshire, 1947, Ch. 183, sec. 1, par. 18).

B. State Board of Health

The Board is empowered to investigate the sanitary conditions and methods pertaining to the source, treatment and distribution of all public water supplies for domestic use, and to require the application of any treatment or improvement in conditions and methods necessary to insure adequate protection of the public health. Before issuing its order, the Board notifies the operator of the water supply of its findings and gives him an opportunity to be heard. If, after the hearing, it is determined that

improvements are necessary, the operator is so notified and must comply with the Board's order within the time fixed by the Board. If the operator fails to comply within 10 days after the expiration of the time limit set by the Board, or, in case of an appeal, within 10 days after final judgment has been entered, he becomes liable to a fine of not less than $100 nor more than $1000 for each day of failure to comply (Ch. 148, sec. 22).

The Board is also empowered to investigate existing systems of sewerage and sewage treatment works and to require installation of sewage treatment, or improvement of existing facilities. The issuance of orders requiring changes or improvements in such sewerage systems or treatment works follows the same procedure as indicated above for water supplies (Ch. 148, sec. 23).

Aggrieved parties have the right of appeal to the Supreme Court (Ch. 148, sec. 24).

The Board is authorized to make inspections and analyses of the public water supplies (Ch. 131, sec.3).

Before anyone can construct any new system or enlarge any existing system for supplying water to the public, or can construct any public system of sewage disposal, he must submit detailed plans of the proposed construction to the Board and secure its approval. This provision also applies to any institution accommodating 30 or more persons which provides its own facilities as to water supply and sewage disposal (Ch. 148, sec. 25).

Anyone desiring to discharge sewage or other deleterious waste from any dwelling, camp, or other commercial establishment into any water not hitherto polluted, must first submit detailed plans of such proposed discharge to the Board and secure its approval. Violation of this provision carries a fine (Ch. 148, sec. 32).

The Board upon its own motion or on petition filed with it, and after investigation, is authorized to establish such regulations as it deems necessary for the protection from contamination of public water or ice supplies (Ch. 148, secs. 15, 16).

The Board, at the request of the State Health Department of an adjoining State, is authorized to make regulations for the protection of the purity of any waters within any specified drainage area in the State which is used as a source of public drinking water supply by the adjoining State (Ch. 148, sec. 17). Violation of the regulations established by the Board carries a fine or imprisonment, or both (Ch. 148, sec. 19).

Before any public highway, access road or private ways of any sort can be constructed which transverses any watershed tributary to a lake, pond or reservoir used for the storage of public drinking water, approval thereof must be obtained from the Board (1955 Supp., Ch. 148, sec. 25-a).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful:

For anyone to place in or near any reservoir or other body of water which is used for domestic purposes by any municipality, any substance or fluid that may cause the water thereof to become impure or unfit for such purpose (Ch. 148, sec. 1).

For anyone to corrupt the water or ice of any well, spring, or other waters used as a source of public water supply; or to put the carcass of any dead animal or other offensive material into such waters or upon the ice thereof (Ch. 148, sec. 3).

To bathe in waters used as a public water supply within the limits prescribed by the local or state board of health (Ch. 148, sec. 7).

To take any fish by the use of any poisonous, stupefying or explosive substance (Ch. 211, sec. 7).

For anyone to put into any public waters streams or watercource in any city or town refuse of any kind (Ch. 249, sec. 27).

For anyone to poison, defile or corrupt any well, spring, brook, lake, pond, river or reservoir, the water of which is used for domestic purposes (Ch. 572, sec. 3).

Effective October 1, 1957, no fluorine can be introduced into the water of any lake, pond, reservoir or stream tributary thereto from which the water supply for domestic purposes is taken unless and until the town or city using said waters has held a public hearing as to the introduction of fluorine into the public water supply of the city or town (Laws of New Hampshire, 1957, Ch. 306, to be added to the Revised Statutes as Ch. 148, sec. 5-a).

After December 31, 1958, (the effective date of the Act) all marine toilets on boats operated on waters of the State must be so constructed and operated as not to discharge any inadequately treated sewage into the waters of the State. Violation carries a fine or imprisonment, or both. The fine operates as a lien against the boat (Laws of New Hampshire, 1957,Ch. 190, to be added to the Revised Statutes as Ch. 149-A.

IV. INTERSTATE COMPACTS

New Hampshire is a party to the New England Interstate Water Pollution Control Compact (Laws of New Hampshire, 1951, Ch. 190).